

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SAYVION D. BLOUNT,

Plaintiff,

-v-

9:21-CV-147

MARK RASTANI, ZACHARY
BURKE, and JOSEPH BROWN,

Defendants.

APPEARANCES:

OF COUNSEL:

SAYVION D. BLOUNT

Plaintiff, Pro Se

Rescue Mission – Kiesewetter

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Syracuse, NY 13202

HON. LETITIA JAMES

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The Capitol

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OLIVIA R. COX

Ass't Attorney General

DAVID N. HURD

United States District Judge

ORDER ON REPORT & RECOMMENDATION

On February 8, 2021, *pro se* plaintiff Sayvion Blount (“plaintiff”), then an inmate in the custody of the New York State Department of Corrections and Community Supervision (“DOCCS”) at Mid-State Correctional Facility, filed

this 42 U.S.C. § 1983 action alleging, *inter alia*, that defendants Corrections Officers Mark Rastani (“Rastani”) and Zachary Burke (“Burke”), as well as Registered Nurse Joseph Brown (“Brown”), violated his civil rights under the Eighth Amendment. Dkt. No. 1. Along with his complaint, plaintiff also sought leave to proceed *in forma pauperis* (“IFP Application”). Dkt. Nos. 2, 3.

On March 29, 2021, this Court dismissed some of plaintiff’s other claims and directed a response to the Eighth Amendment claims against Rastani, Burke, and Brown. Dkt. No. 4. Those defendants answered, Dkt. No. 21, and the case went to discovery on those claims, Dkt. Nos. 22–67. But it is unclear how much discovery occurred, since plaintiff eventually became unreachable by mail. *See, e.g.*, Dkt. Nos. 65, 66, 68, 71.

On September 16, 2022, defendant Brown moved under Federal Rule of Civil Procedure (“Rule”) 56 for partial summary judgment dismissing the Eighth Amendment medical-indifference claim asserted against him. Dkt. No. 69. Plaintiff failed to respond in opposition. *See* Dkt. Nos. 70, 71.

On August 10, 2023, U.S. Magistrate Judge Christian F. Hummel advised by Report & Recommendation (“R&R”) that defendant’s partial motion be granted. Dkt. No. 74. Plaintiff has not filed objections, and the time period in which to do so has expired. *See id.* Upon review for clear error, the R&R is accepted and will be adopted in all respects. *See* FED. R. CIV. P. 72(b).

As a final matter, it bears noting that repeated attempts to communicate with plaintiff have failed because the mailing address on file with the Clerk's Office is not always current. *See, e.g.*, Dkt. No. 75. In fact, it is not current right now. *Id.* Judge Hummel has previously warned plaintiff that "failing to notify the court of address changes" might well result in "the imposition of sanctions," including the "dismissal of this action." Dkt. No. 67.

The Court repeats that warning now. The Local Rules require litigants to promptly notify the Court of an address change. L.R. 10.1(c)(2). Failure to notify the Court may result in sanctions, up to and including dismissal of the action. L.R. 41.2(b). Dismissal, as opposed to a lesser sanction, is ordinarily a disfavored remedy. But it may certainly be warranted when a litigant repeatedly flouts the Local Rules.

That appears to be the case here. The on-again, off-again nature of plaintiff's mailing address has made it difficult to communicate with him about important developments in his case. It has also made it much more challenging for the Court to shepherd this case to a resolution in a timely fashion. Accordingly, plaintiff is again cautioned that failure to comply with the Local Rules—including but not limited to the rule regarding prompt notification about address changes—may result in a sanction, up to and including the dismissal of the remainder of this action.

Therefore, it is

ORDERED that

1. The Report & Recommendation (Dkt. No. 74) is ACCEPTED;

2. Defendant Brown's partial motion for summary judgment (Dkt. No 69)

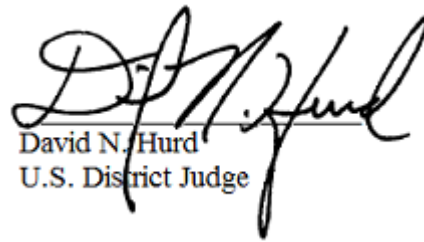
is GRANTED; and

3. Plaintiff's Eighth Amendment claim against defendant Brown is

DISMISSED with prejudice.

IT IS SO ORDERED.

Dated: August 30, 2023
Utica, New York.



David N. Hurd
U.S. District Judge